

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Adjustment of Rates of Kentucky-)
American Water Company)

Case No. 2004-00103

ATTORNEY GENERAL'S
MOTION FOR SURREBUTTAL

The Attorney General submits this request for the opportunity to present surrebuttal during the presentation of his evidence at the public hearing for this case. In support of his motion, the Attorney General submits the following:

Due process requires a fair hearing. The opportunity to present and challenge evidence is part of a fair hearing. In the present case, three factors support the presentation of surrebuttal by the Office of the Attorney General.

First, the Company's presentation of evidence concerning the test year and discovery regarding that evidence was not complete prior to the deadline – under the procedural schedule - for the Office of the Attorney General's submission of pre-filed testimony. Thus, the Attorney General's witnesses have yet to have an opportunity to comment on or otherwise present evidence regarding this subsequent evidence and the corresponding discovery evidence. Surrebuttal provides that opportunity.

Second, it is not unusual for an applicant to make additional adjustments to the application (by specific example, the submission of "known and

measurable" changes) after the submission of pre-filed direct testimony. Surrebuttal provides the Attorney General with the opportunity to present his evidence regarding adjustments, amendments, and changes in the Company's (or another party's) positions subsequent to the filing of the AG's pre-filed direct testimony evidence.

Third, the Company's presentation of rebuttal testimony presents additional evidence and issues. Some of the evidence (for example Coleman Bush's presentation of a 1995 edition of guidelines for a water rationing plan) was available to the Company prior to the filing of its application. Some of the evidence is in response to the Attorney General's pre-filed direct testimony. Both categories are presently subject to additional discovery by Commission Staff, the Attorney General, and the other intervenors. The rebuttal testimony also raises new issues and arguments that are subject to discovery. Surrebuttal provides the Attorney General with the opportunity to present his evidence and positions regarding this material submitted by the Company – material that is subject to discovery only following the submission of his pre-filed direct testimonies.

In sum, the deadline for the Attorney General's submission of pre-filed direct testimony was prior to the completion of discovery. Even after the completion of discovery, it is not unusual for an applicant to offer or seek adjustments or modification to its application. Due process requires a fair hearing. The ability to present evidence and to otherwise comment upon a change in the application or a new argument of the applicant is one requirement

for a fair hearing. Surrebuttal provides the Attorney General with a fair and reasonable opportunity to present his evidence.

WHEREFORE, the Attorney General moves for the Commission to allow his witnesses to present surrebuttal during his presentation of evidence at the public hearing.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL

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Submission of Filing in Paper Medium

Per Instructions 3 and 13 of the Commission's 27 May 2004 Order, Counsel submits for filing, by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, the original and one copy in paper medium of the document. 14 October 2004 is the date for the filing in paper medium.

David Edward Spenard
Assistant Attorney General

Certificate of Service

Per Instructions 4, 8 (d), and 12 of the May 27th Order, Counsel certifies service of a true and correct photocopy of the document by mailing the photocopies, first class postage prepaid, to the other parties of record on 13 October 2004.

The following are the other parties of record: David Jeffrey Barberie, Leslye M. Bowman, Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507; Coleman D. Bush, Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502; Joe F. Childers, 201 West Short Street, Suite 310, Lexington, Kentucky 40507; Roy L. Ferrell, West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, West Virginia 25302; Lindsey W. Ingram III, Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Lindsey W. Ingram, Jr., Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Michael A. Miller, West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, West Virginia, 25302; Jon Parker, 201 W. Short Street, Suite 310, Lexington, Kentucky 40507; Bluegrass FLOW, Inc., c/o Foster Ockerman, Jr., 200 N. Upper Street, Lexington, Kentucky 40507; and Roy W. Mundy II, Kentucky-American Water Company 2300 Richmond Road, Lexington, Kentucky 40502.

David Edward Spensh
Assistant Attorney General

Certification Regarding Electronic Filing

Counsel certifies that he has (per Instructions 3 and 8 (b) of the May 27th Order) submitted one copy of the document in electronic medium. Pursuant to Instructions 8 (a) and 8 (c) of the May 27th Order, he certifies that the electronic version of the filing is a true and accurate copy of the document filed in paper medium and that he has, by electronic mail, notified the Commission and the other parties that the electronic version of the filing has been transmitted to the Commission. (See attached) 13 October 2004 is the date of filing in electronic medium.

David Edward Spindel
Assistant Attorney General